

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
POUGHKEEPSIE DIVISION

In Re:

Chapter 13
Case No.: 08-37599

HORACE REID, III

Debtor,

**NOTICE OF MOTION TO EXPUNGE CLAIM PURSUANT TO
11 USC §502(b)(1) and FRBP RULE 3007**

PLEASE TAKE NOTICE that upon the Motion of the debtors by their attorney, MICHAEL O'LEARY, ESQ., the undersigned will move this Court at the U.S. Bankruptcy Court, 355 Main Street, Poughkeepsie, New York, on the 17th day of November, 2009 at 9:15 AM, or as soon thereafter as counsel can be heard, for an Order, pursuant to 11 USC §502(b)(1) and FRBP Rule 3007:

1. Expunging the following secured claim(s)

Claim No.:

Claimant

1 (see page 2)

Countrywide Home Loans Servicing, LP

5 (see page 2)

Countrywide Home Loans, Inc.

PLEASE TAKE FURTHER NOTICE that claimants receiving this motion should locate their names and claims in the body of the motion.

PLEASE TAKE FURTHER NOTICE that pursuant to LBR Rule 9006-1(b), answering affidavits or opposing memoranda of law must be served no later than three (3) days prior to the return date of the motion.

Dated: Middletown, New York
October 9, 2009

Hayward, Parker, O'Leary & Pinsky, Esqs.
Attorneys for Debtor(s)

By: /S/ MICHAEL O'LEARY

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HORACE REID, III

Debtor,

**MOTION TO EXPUNGE CLAIM
PURSUANT TO 11 USC §502(b)(1) and FRBP RULE 3007**

The motion of the debtor by his attorney, MICHAEL O'LEARY, ESQ., respectfully represents:

1. The debtor, Horace Reid, III, filed a Chapter 13 bankruptcy petition on November 19, 2008 and hereby objects to the following claim(s):

**CLAIM NO. 1 FLED BY
COUNTRYWIDE HOME LOANS SERVICING, LP**

2. Countrywide Home Loans Servicing, LP ("Countrywide") filed a secured claim on January 6, 2009 seeking arrearages in the amount of \$9,956.19, which claim was docketed as Claim No. 1. Relevant portions of said claim are annexed as Exhibit "A".
3. Pursuant to this Court's Loss Mitigation program, the arrearages sought by Countrywide were capitalized and a Loan Modification Agreement signed by debtor and provided to Countrywide. This Court approved said Loan Modification at a hearing held on September 29, 2009. The Order evidencing said approval has been submitted to the Court, but has not yet been signed at the time of the drafting of this motion.
4. The mortgage arrearages sought by Countrywide no longer exist and for this reason it is submitted that Claim No. 1 is not enforceable against the estate and should be expunged, pursuant to 11 USC§502(b)(1).

**CLAIM NO. 5 FILED BY
COUNTRYWIDE HOME LOANS, INC.**

5. Countrywide Home Loans, Inc. ("Countrywide") filed a secured claim on February 18, 2009 seeking arrearages in the amount of \$55,366.13 which claim was docketed as Claim No. 5. Relevant portions of said claim are annexed as Exhibit "B".
6. Pursuant to this Court's Loss Mitigation program, the arrearages sought by Countrywide were capitalized and a Loan Modification Agreement signed by debtor

and provided to Countrywide. This Court approved said Loan Modification pursuant to an Order signed on August 13, 2009.

7. The mortgage arrearages sought by Countrywide no longer exist and for this reason it is submitted that Claim No. 5 is not enforceable against the estate and should be expunged, pursuant to 11 USC§502(b)(1).
8. No prior application has been made for the relief requested herein.

WHEREFORE, the undersigned respectfully requests that the Court enter an Order Expunging Claims No. 1 and 5 and granting to the debtor such other and further relief as to the Court may seem just and proper.

Dated: Middletown, New York
October 9, 2009

Hayward, Parker, O'Leary & Pinsky, Esqs.
Attorneys for Debtor(s)

By: /S/ MICHAEL O'LEARY

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UNITED STATES BANKRUPTCY COURT
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In Re:

Chapter 13
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HORACE REID, III

Debtor,

**MEMORANDUM OF LAW IN SUPPORT OF
APPLICATION TO EXPUNGE CLAIM
PURSUANT TO 11 USC §502(b)(1) and FRBP RULE 3007**

MAY IT PLEASE THE COURT:

This Memorandum of Law is submitted by the debtor(s), as required by the Local Rules of the Southern District of New York, in support of the debtor(s) Application to Expunge Claims, pursuant to 11 USC §502(b) and FRBP Rule 3007:

11 USC §502(b) provides, in pertinent part, as follows:

- (a) A claim or interest, proof of which is filed under Section 501 of this title, is deemed allowed, unless a party in interest ... objects
- (b) ... if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim ... as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that –

- (1) such claim is unenforceable against the debtor and property of the debtor, under any law or applicable agreement...

• • •

Relevant portions of FRBP Rule 3007, as amended, set forth:

- (c) Limitation on Joinder of Claims Objections. Unless otherwise ordered by the Court or permitted by subdivision (d), objections to more than one claim shall not be joined in a single objection.

It is submitted that this omnibus motion should be allowed, as the same sophisticated creditor is involved in each claim, and there are no complicated issues of law being addressed.

Based on the foregoing reasons, and the reasons set forth in the application in support thereof, the Court is respectfully requested to expunge the claims in question as requested in the motion.

Dated: Middletown, New York
October 9, 2009

Hayward, Parker, O'Leary & Pinsky, Esqs.
Attorneys for Debtor(s)

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